

AIR FORCE OFFICE OF THE GENERAL COUNSEL

2011 Annual Ethics Training

Presented by

SAF/GCA

Air Force Office of General Counsel

COVERED TOPICS

- ETHICS LAWS & REGULATIONS-OVERVIEW
- POST-GOVERNMENT EMPLOYMENT RULES
- FOCUS TOPIC: ACCEPTANCE OF GIFTS

ETHICS LAWS & REGULATIONS

CRIMINAL RULES

- **BRIBERY**. Actual Corruption is the core.
- **CONFLICT OF INTEREST LAWS** prevent acts that appear corrupt.

ADMINISTRATIVE RULES

- **14 ETHICAL PRINCIPLES** establish ethical values/goals for Federal employees; can be basis for discipline.
- **EXECUTIVE BRANCH STANDARDS OF CONDUCT** implement Ethics in Government Act & criminal statutes; prevent actual & apparent conflicts.
- **DoD SUPPLEMENTAL ETHICS REGULATION** imposes additional limits and restrictions on the Standards for DoD personnel.

CRIMINAL RULES: Bribery & Conflict of Interest Laws



BRIBERY

18 U.S.C. § 201—Prohibits Public officials from:

- Seeking, receiving or agreeing to accept
- **Anything of value**
- For themselves or others

- **In return for being**
- **Influenced** to aid in committing a fraud on the U.S. or
- **Induced** to do/omit to do any act in violation of official duty



COMPENSATED REPRESENTATIONAL SERVICES

18 U.S.C. § 203 –Prohibits **Federal employees** from:

- Seeking or accepting **compensation** for
 - Representing another
 - Performing **services in support** of **representation**, OR
 - Receiving money from anyone else's representation
- Before a Federal department, agency or court (not Congress)
- In matters where the U.S. is a party or has substantial interest

REPRESENTATION

18 U.S.C. § 205 -Prohibits Federal employees from:

- **Prosecuting or assisting** in the prosecution of a **claim** against the U.S. or receiving a gratuity or share of a claim in return for assisting in prosecuting such claim, OR
- **Representing another (with or without compensation)**
- Before a Federal department, agency or court (not Congress)
- In matters where the U.S. is a party or has a substantial interest

CONFLICTING FINANCIAL INTERESTS

18 U.S.C. § 208—Prohibits Federal employees from:

- Participating personally and substantially in an official capacity
- In any **particular matter** that has:
 - A direct and predictable effect on their **financial interests**
 - Or upon those **financial interests imputed to them**

FINANCIAL INTERESTS

Covered financial interests INCLUDE:

- **Yours; AND**
- **Interests Imputed to You**, including interests held by:
 - **Your spouse; minor children; general partners** [E.g., *Your spouse's stock in a defense contractor*];
 - **Entities you serve as officer, director, trustee, general partner or employee** [E.g., *Service as officer of a non-profit entity*]; or
 - **Entities from whom you are negotiating or have an arrangement for future non-Federal employment.**

DUAL COMPENSATION

18 U.S.C. § 209—Prohibits Federal employees from:

- Seeking or receiving any **compensation** from
- A **non-Federal source**, in return for
- **Performance of their official duties**

THE 14 ETHICAL PRINCIPLES

PUBLIC TRUST: Put loyalty to Constitution, laws and ethical principles above private gain.

CONFLICTING FINANCIAL INTERESTS: Don't hold financial interests that conflict with performance of duty.

MISUSE OF NONPUBLIC GOVERNMENT INFORMATION: Don't use or allow use in financial transactions or to further private interests.

GIFTS: Don't solicit/accept them from “prohibited sources.”

HONEST EFFORT: Put forth in performing your duties.

THE 14 ETHICAL PRINCIPLES

UNAUTHORIZED COMMITMENTS: Don't knowingly make them or make promises purporting to bind the Government.

USING PUBLIC OFFICE FOR PRIVATE GAIN: Just don't.

IMPARTIALITY: Don't give preferential treatment to anyone.

FEDERAL PROPERTY: Use only for authorized activities.

OUTSIDE EMPLOYMENT/ACTIVITIES: Don't seek or engage in if it conflicts with official duties and responsibilities.

THE 14 ETHICAL PRINCIPLES

WASTE, FRAUD, ABUSE, CORRUPTION: Disclose to authorities.

MEET YOUR OBLIGATIONS: Satisfy obligations as a citizen (e.g., pay just financial obligations imposed by law, such as taxes).

SUPPORT EQUAL OPPORTUNITY in performance of duties.

APPEARANCES: Avoid actions creating appearance of violating the laws or ethical standards, where a reasonable person with knowledge of the relevant facts would question your decision.

THE GOVERNMENT-WIDE STANDARDS

The Executive Branch **Standards of Ethical Conduct**, **5 CFR part 2635**, cover:

- **Gifts**
- **Conflicting Financial Interests**
- **Impartiality**
- **Non-Federal Employment**
- **Misuse of Official Position**
- **Outside Activities**

DoD SUPPLEMENTAL REGULATION

The **DoD Supplemental Ethics Regulation** covers:

- **Gifts From Outside Sources**—Exceptions:

- Events sponsored by States, local governments and civic organizations
- Scholarships and grants
- **Gifts between DoD employees**—Limitations:
 - Gifts from a group including a subordinate cannot exceed \$300
 - Solicitations for contributions for gifts to superiors cannot exceed \$10
 - **Written Disqualifications:** Required for both conflicts of interest and loss of impartiality concerns for all disclosure filers.

DoD SUPPLEMENTAL REGULATION

- **Sales to DoD personnel:** DoD employees may not solicit or make sales to DoD personnel (or their families) who are junior in rank, grade or position.
- **Outside Employment:** DoD financial disclosure filers must receive prior written approval to engage in outside employment with a DoD prohibited source.
- **Disclaimers on Writing:** DoD personnel must use disclaimer for personal speeches and writings devoted to DoD matters.

SEEKING AND POST-GOVERNMENT EMPLOYMENT RULES



SEEKING POST-GOVERNMENT EMPLOYMENT: BASIC RULE

When seeking non-Federal employment, you **MUST**:

- **Disqualify** yourself from official participation
- In any particular matters
- That have a direct and predictable affect on financial interests
- Of persons with whom you seek or have arrangements for non-Federal employment.

VIOLETION CAN CONSTITUTE A CRIMINAL OFFENSE.

POST-GOVERNMENT EMPLOYMENT REPRESENTATIONAL BARS

18 U.S.C. § 207- Upon leaving the Federal Government, employees are subject to additional CRIMINAL restrictions under this statute that may limit their interactions with the Federal Government on behalf of another person or entity.

POST-GOVERNMENT EMPLOYMENT

Key Representation Bars

Lifetime Ban: Bars all former employees from representing another before any Federal agency or court regarding particular matters involving specific parties in which they participated personally and substantially at anytime during Federal service. . [“Lifetime” means lifetime of the particular matter (e.g., contract)].

2-Year Ban: Bars all former employees from representing before any Federal agency or court regarding particular matters involving specific parties that were under their official responsibility during their last year of Federal employment.

1-year Cooling Off: Bars “Senior employees,” for one year after leaving a senior position, from representing another before their former agency to seek official action. (2 years for political appointees of the Obama Administration)

BOTTOM LINE

These rules are complicated—SO—if you:

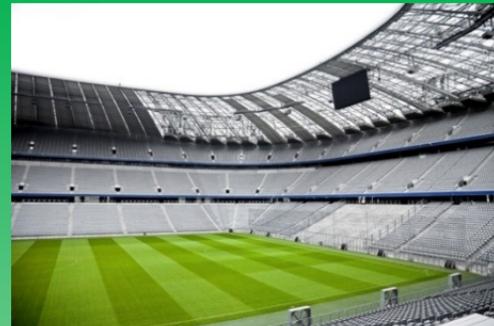
- Plan to start “looking” and/or
- Plan to interact with the Federal Government after you leave—

Contact SOCO for advice.

PLEASE!



GIFTS



GIFTS: Roadmap

- **Personal Gifts**
 - **Gifts From Outside Sources**
 - **Gifts Between Employees**
 - **Gifts From Foreign Governments**
 - **Reporting**
 - **Official Gifts**

PERSONAL GIFTS



“FOR ME? JUST BECAUSE I’M A FED? NO WAY!”

Obama Administration Officials



Applies to Non-career Appointees only!

Executive Order 13490 (“Ethics Pledge”) generally prohibits Obama Administration appointees from accepting a gift (e.g., a free meal), irrespective of value, from a **registered lobbyist** or **lobbying organization**.

NOTE: Does not apply to gifts from 501(c)(3) or media organizations.

GIFTS FROM OUTSIDE SOURCES

5 CFR Part 2635, Subpart B



... No, it's just because we really like you. But since you asked

GIFTS FROM OUTSIDE SOURCES

5 CFR Part 2635, Subpart B

RULE: You **MAY NOT:**

- **Solicit, accept or coerce the offering**
- **Directly or indirectly**
- **A gift either--**
 - **From any prohibited source to OSD, or**
 - **Given based on your official position**

Gifts from “Prohibited” Sources

“Prohibited source” means any person who or entity which:

- **Seeks official action** by OSD
- **Does/seeks to do business** with OSD
- **Has interests that may be substantially affected** by performance/nonperformance of your official duties, or
- Is an **organization** a majority of whose members are prohibited sources to OSD

“Gift” Defined

Anything of value, including:

- Cash
- Tangible items
- Services
- Entertainment, hospitality, gratuity, or favor
- Training, travel, transportation, lodging and meals
- A discount, loan, or forbearance (forgiveness) of a loan, offered as a result of your official position

Indirect Gifts

Indirect Gifts include items given to:

- **A parent, spouse, sibling, child, dependent relative because of that person's relationship with you; or**
- **Any other person, including a charity, based on your designation, direction or recommendation.**

9 EXCLUSIONS:

Non-gifts:

- **Snacks** such as coffee or donuts that are not part of a meal
- **Greeting cards** or items of **little intrinsic value** such as plaques, certificates, and trophies, intended for presentation only
- **Loans/credits** from banks/financial institutions at publicly-available rates
- Anything for which **you paid** fair market price
- Anything **paid** for or secured **by the Government**

9 EXCLUSIONS:

Non-gifts:

- A gift accepted by the Government under statutory authority
- Opportunities and benefits, including favorable rates and commercial discounts available to the public or all Government employees [e.g., GEICO reduced car insurance]
- Pensions and other benefits resulting from continued participation in an employee welfare and benefit plan
- Rewards and prizes open to the public ...

Rewards & Prizes—A Note

To qualify for this exclusion, entry into the contest or random drawing MUST:

• **Be open to the GENERAL public**—Entry may NOT be limited:

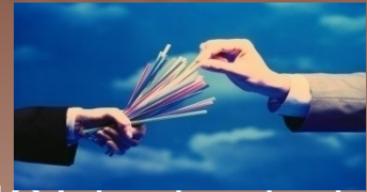
- To attendees, or those who filled out evaluation sheets; or
- By lack of public access, or lack of effective notice;

AND

• **NOT be based on actual performance of Federal duties--**
Entry may NOT be:

- Automatic as part of conference registration; or
- Based on amount of purchases made for your DoD organization.

Note: Requires more than mere presence [e.g., entry based on presence at hotel]



QUESTION

Bob attends the annual meeting of the Association for Personnel Without Other Associations. The event is closed to the public. DoD paid the entrance fee. Bob attends on official time. As part of the event, there's a door prize drawing from the names of all paid attendees. Bob wins. Can he keep the \$1,500 prize?

- a. Yes. The drawing was part of the entrance fee.
- b. No. The drawing was part of the entrance fee.
- c. No. The drawing was not open to the public.

12 GIFT EXCEPTIONS

The following exceptions permitting Federal employees to accept otherwise improper gifts:

- Gifts of \$20 or less [“\$20/\$50 *de minimus*” Rule];
- Gifts based on a personal relationship [“Friends & Family” Rule];
- Discounts and similar benefits;
- Awards and honorary degrees;
- Gifts based on outside business/employment relationships;
- Widely attended gatherings and other events;

12 GIFT EXCEPTIONS

- Gifts in connection with permissible partisan political activity;
- Social invitations from persons other than prohibited sources;
- Meals, refreshments and entertainment in foreign areas;
- Gifts to the President or Vice President;
- Gifts authorized by supplemental agency regulation; and
- Gifts accepted under specific statutory authority.

EXCEPTIONS:

\$20/\$50 “*De Minimus*” Rule

You may accept otherwise improper gifts:

- Worth \$20 or less per occasion, per source; and
- No more than \$50/year from any one prohibited source.

- *This exception does not include cash/investment instruments.*

Exceptions: \$20/\$50 Rule

For gifts that exceed \$20 your options are:

- Decline the gift
- Non-severable Gift--Pay fair market value for entire gift
- Severable Gift--Accept a portion worth no more than \$20
- Food--If it will spoil, share it with the office
- Return the gift promptly at government expense.

QUESTION

Harry oversees an office that recently awarded a support contract to IT Gurus, Inc. Around holiday season, IT Gurus sends Harry the following items with a note thanking him for selecting them:

Ballcap

with IT Gurus logo (value \$12), Sweatshirt with IT Gurus logo (\$23),

and box of fruit (\$25). What can he accept?

- a. Ballcap and Sweatshirt.**
- b. Only the fruit.**
- c. Ballcap and fruit (if shared with the office).**

EXCEPTIONS: Friends & Family Rule



You MAY accept a gift where circumstances make clear that the gift is motivated by family relationship/personal friendship rather than your official position [e.g., *holiday gift from brother who works for a prohibited source*].

- Factors to consider include:
 - The history of the relationship and
 - Whether your friend or family member personally paid for the gift (no expensing to employer)
 - There is no limit to the value of the gift

EXCEPTIONS:

Group Discounts

You MAY accept:

- Reduced **membership fees** offered by organizations to all government/military personnel
- Opportunities/Benefits to group members if membership is:
 - Unrelated to government employment or
 - Related to government employment IF same benefit is offered to a large segment of the public
- **Benefits** offered from other than prohibited source and class is not based on position, rank or rate of pay

EXCEPTIONS:

Gatherings & Events (Official Capacity)

You MAY accept an **unsolicited** gift of:

- Free attendance for the
- Day(s) of your actual participation when
- Speaking or serving as a **panel member** in your
- **Official capacity**

Note: *Food, refreshments, entertainment, instruction and materials furnished are considered customary and not gifts to you or to OSD.*

Note: *You cannot accept travel or lodging costs, but OSD may do so if appropriate under 31 U.S.C. 1353.*

EXCEPTIONS:

Gatherings & Events (Personal Capacity)

You MAY accept an **unsolicited** gift of:

- **Free attendance** for the
- **Entire event** if
- You are attending in your **personal capacity** and the
- **Agency designee** (usually supervisor) has made an advance determination in writing that:
 - The event is a **widely-attended gathering**; and
 - Your attendance **further OSD programs and operations**.

Widely-Attended Gathering

- **MEANS:**
 - Numerous Attendees
 - Attendees represent a diversity of views and interests

NOTE: Does NOT include travel or accommodation costs.

DoD Supplement: Attending Certain Events

You **MAY** accept a **sponsor's unsolicited gift** of free attendance for:

- Yourself & accompanying spouse at an event sponsored by a **State or local government or a civic 501(c)(4) organization, if:**
 - **The sponsor bears the cost, and**
 - **You receive advanced Agency Designee approval.**
- Transportation and lodging are not included.

QUESTION

Gail is assigned to speak at the American Defense Industry Association (ADIA) Conference. ADIA is a prohibited source. The fee to attend is \$200, but ADIA offers to waive Gail's fee and also offers her a nominal (\$15) plaque for participating. Gail:

- a. Can accept the fee waiver and plaque.**
- b. Can accept the fee waiver only.**
- c. Must pay the full fee, but can accept the plaque.**

EXCEPTIONS:

Awards/Degrees

- **Awards.** You **MAY** accept a **non-cash award** worth **\$200 or less** from a source not affected by the performance or non-performance of your official duties, offered for **meritorious public service** and under a ***bona fide* award program**.
- **Honorary Degrees:** In addition to above, you **MAY** accept from “institutions of higher education.”

Note: May accept meals and entertainment given to you and your family at presentation. Examine timing of award.

EXCEPTIONS:

Outside Business or Employment

IF clear that the gift is not offered to gain access to you, or to influence you, you MAY accept meals, lodgings, transportation, and other benefits:

- Based on your **spouse's employment** or
- Based on **your outside business/employment**

You also may accept the same where customarily provided by a **prospective employer** in *bona fide* employment discussions.

Limits on use of Exceptions

Even if an exception applies, YOU CANNOT:

- Accept in return for **being influenced** in performance of an official act;
- **Solicit or coerce** the offering of a gift; or
- **Accept from same of different sources on a basis so frequent** that a reasonable person would be led to believe the employee is using his public office for private gain.

ALSO: Circumstances may make it wise for you to decline.

GIFTS BETWEEN EMPLOYEES

5 C.F.R. part 2635, subpart C: Gifts Between Employees
5 U.S.C. § 7351: Gifts to Superiors



E.g., Food shared at the office??

GIFTS BETWEEN EMPLOYEES

Giving

You **MAY NOT**, absent an exception

- Directly or indirectly
- **GIVE** a gift,
- **Donate** toward a gift for an **official superior**, or
- **Solicit** a contribution from another employee for a gift to an **official superior**.



GIFTS BETWEEN EMPLOYEES

Receiving

You **MAY NOT**, absent an exception:

- Directly or indirectly
- **ACCEPT** a gift
- From **any lesser-paid employee** unless there's:
 - A personal relationship that justifies the gift; **AND**
 - **No** superior/subordinate relationship.



General Exceptions:

On an occasional basis

- **De Minimus (“\$10”) Rule:** A non-cash gift worth up to \$10.
- **Food:** Food shared with office.
- **Customary hospitality:** If you go to a gathering at the boss’ house, you can actually bring wine with a cork.
- **Leave** under an approved DoD **leave sharing** plan except to an immediate supervisor.

Special Gift Exceptions:

- **A special, infrequent occasion of personal significance** [E.g., marriage, death, birth or adoption of a child]

OR

- **Events terminating superior/subordinate relationship** [E.g., retirement, transfer, promotion outside supervisory chain]

Special Exception: Solicitations

GOVERNMENT-WIDE STANDARDS: You MAY solicit from fellow employees for and make:

- **Voluntary contributions**
- Of **nominal amounts** for
- An **appropriate gift** to an official superior

DoD SUPPLEMENTAL RULES:

Appropriate Gift: **\$300 limit** if donating group
Subordinate cannot be **solicited** to give more than **\$10** (not including food, refreshments & entertainment).



QUESTION

Toni travels often as part of her job. She buys a souvenir coffee cup from each city she visits for her boss, Joe, who collects them. She only buys cups costing under \$10. Can Joe accept them?

- a. Yes, because the cups are worth \$10 or less.**
- b. No, because the cups are being given on a regular basis.**
- c. No, because she should never buy gifts for her official superior under any circumstances.**

QUESTION

Barbara is retiring from Federal service. Her office wants to throw a retirement party before she retires. Sherri, her AA, is collecting contributions towards a gift to be given to her at the party. Which of the following actions poses an ethical dilemma?

- a. Sherri's email to Barbara's staff requiring contributions of \$10.**
- b. Sherri's email asks \$10 of subordinates, but several give \$20.**
- c. Jack, on behalf of the office IT contractor, gives \$75.**
- d. The gift value is \$400, but Sherri seeks no more than \$10 from Barbara's subordinates.**

GIFTS FROM FOREIGN GOVERNMENTS



Unsolicited gifts from **foreign governments**, officials, or entities MAY be accepted either:

• **PERSONALLY** where the gift is of:

- “**Minimal value**” & tendered/received as souvenir/mark of courtesy; or
- Any value for: **Travel** completely outside of the U.S. if consistent with U.S. interests; **Medical care**; or Educational **scholarships**; OR

• **ON BEHALF OF THE U.S.** where:

- The souvenir/courtesy gift exceeds the “minimum value;” and
- Refusing the gift would likely cause offense or **embarrassment** or otherwise adversely affect the foreign relations of the United States.

Gift Reporting: For Financial Disclosure Filers

REPORT--Other than as noted below, personal gifts and travel reimbursements over **\$335** during reporting period.

DO NOT REPORT--**Anything received from:**

- Relatives
- U.S., D.C., state, or local governments
- Vested bequests and other forms of inheritance
- Gifts/travel reimbursements accepted by DoD (e.g., 1353 travel)
- Gifts of hospitality at the donor's residence or personal premises
- Anything received by your spouse/dependent child totally independent of their relationship to you

OFFICIAL GIFTS to DoD

Title 10 U.S. Code

DoD has statutory authority to accept gifts under certain circumstances. These gifts amount to an augmentation to DoD appropriations and therefore fall under fiscal principles, not these rules.

NON-FEDERAL TRAVEL SUPPORT

31 U.S.C. § 1353

May Permit DoD to accept in kind or reimbursement from a non-Federal source (travel, lodging, meals, and certain other expenses):

- For your approved **official travel** (you must be on travel orders)
- To attend a **meeting or similar function**
- That takes place **away from** your official station
- With **prior written DoD approval** and conflict of interest review by SOCO before acceptance.

QUESTION

ITA, a trade group and prohibited source, holds its 3-day annual conference locally and invites Chad to speak officially at the event. ITA offers to cover his entrance fee, accommodations and meals for the whole conference. ITA expects 300 attendees.

Can he accept the offer to attend the entire event?

- a. Yes, because the conference is a widely-attended gathering.
- b. Yes, because he's speaking and attending in official capacity.
- c. No. There is no way he can accept for the entire event.

BOTTOM LINE

DoD personnel do not generally have authority to accept gifts offered to the Department, or that relate to DoD, its operations, and its personnel. **Check with OGC or your gift acceptance authority.**

E.g., DoD employees cannot accept non-Federal Travel Support. Only designated travel approving officials have that authority—and only after completion of an ethics conflict of interest review.

Air Force Ethics Office Contact Information

- **Air Force Designated Agency Ethics Official (DAEO):** The Honorable Charles A. Blanchard, General Counsel.
- **Air Force Alternate DAEO:** Cheri Cannon, Deputy General Counsel for Fiscal, Ethics and Administrative Law
- **Director, Air Force Ethics Office:** Bruce T. Brown, Associate General Counsel for Fiscal, Ethics and Administrative Law
- **Ethics Counselors:** Attorneys assigned to the Air Force Ethics Office and SJAs.
- **If you have questions please contact your local Staff Judge Advocate Office for Assistance.**
- **HAF personnel should contact the Air Force Ethics Office at (703) 693-0417 or safgca.ethics@pentagon.af.mil for assistance.**